

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON EDUCATION**

**Call to Order:** By **CHAIRMAN GAY ANN MASOLO**, on February 2, 2001  
at 3:10 P.M., in Room 137B Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Gay Ann Masolo, Chairman (R)  
Rep. Kathleen Galvin-Halcro, Vice Chairman (D)  
Rep. Joan Andersen (R)  
Rep. Gary Branae (D)  
Rep. Nancy Fritz (D)  
Rep. Hal Jacobson (D)  
Rep. Larry Lehman (R)  
Rep. Jeff Mangan (D)  
Rep. Joe McKenney (R)  
Rep. John Musgrove (D)  
Rep. Alan Olson (R)  
Rep. Butch Waddill (R)  
Rep. Allan Walters (R)  
Rep. Merlin Wolery (R)

**Members Excused:** Rep. Bob Lawson, Vice Chairman (R)  
Rep. Norma Bixby (D)  
Rep. Verdell Jackson (R)  
Rep. Ken Peterson (R)

**Members Absent:** None.

**Staff Present:** Connie Erickson, Legislative Branch  
Nina Roatch, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 358, 1/22/2001; HB 384,  
1/26/2001  
Executive Action: HB 384; HB 321; HB 322

**HEARING ON HB 358****Sponsor:** KEITH BALES, HD 1, Otter**Proponents:** None**Opponents:** None**Opening Statement by Sponsor:**

**REPRESENTATIVE KEITH BALES, HD 1, Otter**, said he presented the bill because the loss of population causes problems in rural schools. If a school is without pupils for three years, it is automatically forced to close. The school district is merged into another school district. In his situation, the school went for three years without students and the school district was merged into the Broadus school district. He lives about 55 miles from Broadus and he has hired an individual that has some children. His neighbor has done the same. The neighbor's family is home schooling their children. The **SPONSOR's** hired man is driving his son thirty miles one-way to catch a bus and then the son rides twenty-five miles to school. The family has two grade school children also. **REPRESENTATIVE BALES** looked into opening a school. He learned that it takes five students to open a school. One can petition to open a school with three students, but then the county commissioners need to confirm that there are five ANB at the present time. If it is during the middle of the year, the school is faced with a tight budget and it is virtually impossible to open a school. To find a solution to this problem, he drafted the bill. It will make it possible to open a school for two students in the middle of a school year. The process will remain relatively the same. It will have some additions. Someone has to go to the local school board, ask to have a school opened, they will look at the situation and then take it to the county superintendent. That person will take it to the county commissioners. The commissioners have to approve the request after they have verified that there are two students. The bill has some parameters in it and the request to open the school has to qualify for the isolation clause. Section 2 is the school isolation portion of the bill and it relates to how far a person lives from a school and takes into consideration the road conditions that must be traveled. The section would take care of the criteria and not allow for frivolous applications. The bill also authorizes the local school board or the county commissioners to send in a budget request at the time the request for the school is made to OPI. He had hoped OPI would have some money to help a school open, but now realizes that won't be true. The bill is written so that the school's budget would be prorated

on the amount of the year remaining. He has come to the conclusion that it often costs as much to start a school in midyear as it would to start a school at the beginning of the year. He has an amendment to offer that would change the prorated part of the bill. If the amendment is accepted, it would change the fiscal note. The fiscal note is in the amount of \$7,400 to impact the general fund. He feels there is no way of telling what the fiscal note amount should be because there may not be any requests to open a school one year and the next year there could be two requests. This is the best estimate that could be brought forth. He used his situation as an example, but there are the same situations elsewhere in the state.

**Questions from Committee Members and Responses:**

**REPRESENTATIVE WADDILL** had a question for **Mr. Cooper**. Would you have any idea why the number 3 was set on line 17, page 1? **Mr. Cooper** said he had no idea.

**REPRESENTATIVE LEHMAN** questioned the **SPONSOR**. Are the trustees who are alluded to in the proposal the trustees of the district to whom the closed district was merged? The **SPONSOR** said yes.

**REPRESENTATIVE GALVIN-HALCRO** also had a question for the **SPONSOR**. Is the fiscal impact the result of a school opening in the middle of the school year, realizing that the children started in one school which received funding for them and now a second school wants funding for the same children? Would both the schools receive funding, so the one that is losing its students would not be impacted when the reopened school receives funding? Would it be possible that two schools in two different buildings would be receiving funding for the same students? The **SPONSOR** said he presumed that could happen. He didn't believe there were adjustments made when a student moves from one district to another.

The **CHAIR** had a question for **Mr. Cooper, OPI**. How many schools in the past three or four years have reopened? **Mr. Cooper** said that he did not know of any. The **CHAIR** asked him if it is rather difficult to open a school once it is closed. **Mr. Cooper** said that it is difficult to reopen a building and hire a teacher for two or three students with the money that would be available.

**REPRESENTATIVE FRITZ** had a question for **Mr. Cooper**. Has OPI ever considered hiring itinerant teachers for this kind of situation? **Mr. Cooper** said no.

**Closing by Sponsor:**

**REPRESENTATIVE BALES** said he would doubt that any schools have been reopened lately because the present standard states that there must be five students to open the school. Budgets are tight and usually school boards say there is no financing to reopen a school. This is a problem that doesn't come up often, but when it does, it is a stressful time for the parents and the students. He believes in the future there might be some answers in interactive TV through the satellite system that might teach all rural students.

**HEARING ON HB 384**

**Sponsor:** REPRESENTATIVE TOM FACEY, HD 67, Missoula

**Proponents:** None

**Opponents:** Lance Melton, MSBA  
Bruce Messinger, Helena Schools

**Opening Statement by Sponsor:**

**REPRESENTATIVE FACEY, HD 67, Missoula,** said his bill is about accountability. It is intended that the report requested in the bill will be filed with OPI and the county superintendent. It is intended to be flexible and easy for the school to do. He appreciates the fact that the report requested will take a fair amount of effort the first year because measurements will need to be taken. After the first year it will be much easier to do the report. The body of the bill is in lines 18 through 24.

**EXHIBIT (edh27a01)** He has seen children placed in very tight spaces and this bill would address that kind of situation. The bill is not asking for a long detailed description of space used for instruction. It would let the public know how much space is used for administration. The public can be made aware of what money is derived from leasing and renting school property. The school board could include in the report the needs they see currently or in the future. They can build a history of needs for the public. The report would be available to the public. A person in the district would be able to challenge information in the report and the school district would have 30 days to respond. The bill may need some changes so that the dates would align with current reports. He does not want the report to be a burden to the district. The fiscal note points out some dates that are already in existence.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**REPRESENTATIVE MANGAN** had a question for the **SPONSOR**. Do we need to specify whether a building is a school building or is it a district building? He said that he doesn't know if there is a difference. **REPRESENTATIVE FACEY** said if a school building is closed and it becomes a community center, etc., then it would need to be described as other than a school building.

**REPRESENTATIVE BRANAE** had a question for the **SPONSOR**. How do you think the information in the report will be used? The **SPONSOR** said a person should think about the buildings in his school district. He has no public schools in his district. His district wants to know what it being done with the buildings once they are closed. He wants accountability and still wants the report to be short and easy.

**REPRESENTATIVE FRITZ** also had a question for the **SPONSOR**. She said that she is puzzled by the bill. She attends board meetings in Missoula and is sure all this information is available from the superintendent and the board of trustees. Do you believe this could be answered on a local level without the bill? The **SPONSOR** said no because he doesn't believe the local people have this information.

**REPRESENTATIVE WADDILL** had a question for **Mr. Cooper**. Since the bill requires OPI to gather information, why have you not stated whether your office is a proponent or an opponent? **Mr. Cooper** said he believes the requested information is already available in the schools. It would be a requirement for fire insurance and other necessary requests. That information could be requested at the local level or at the state level when a school is scheduled to be closed. He believes this is asking the school districts for a time-consuming job each year. **REPRESENTATIVE WADDILL** asked **Mr. Cooper** if he believes the administrative burden is worth the effort? The question was deferred to **Bruce Messinger, Superintendent of Helena Schools**. He said he is opposed to the bill. It is a significant burden. His schools have that information and can account for every square inch of their property. When there is the burden of either opening or closing a school or modifying boundaries, there is significant work. If there isn't, then the district should be held accountable. It is the public that should hold the district accountable. He sees the issues in the bill as local control issues and not state issues. It would be an undue burden for school administrators and OPI. It would serve the needs of very few.

**REPRESENTATIVE WOLERY** asked **Dr. Messinger** if he readily gives out the information that he has indicated is available in his district office? **Dr. Messinger** said that if they were asked for the information, they would share it. The frequency of that request is minimal. Functions change yearly or even during the year. It depends on what structural activities or support activities might be going on in the school building. Their blueprints are updated annually as to how they are using space.

**REPRESENTATIVE WOLERY** said his answer had jarred another thought. Would it be wise to hand out a blueprint of a building?

**Dr. Messinger** said information is given when it is appropriate to do so.

**REPRESENTATIVE ANDERSEN** had a question for the **SPONSOR**. Did you give consideration to the thought of having the report given orally to the school board at a regularly scheduled meeting so it could be reported by news media and become common knowledge to the general public? The **SPONSOR** said he did not want to depend on the media to get the information to the public. The crux of the matter is, how available is this information to the public? He does believe it is available to the public.

**REPRESENTATIVE JACOBSON** asked **Dr. Messinger** if he recalled about how many inquiries he had as to regards to the physical plants of the two schools that were recently closed in Helena?

**Dr. Messinger** said that he didn't know how many requests they received. There were hours of meetings held and public testimony and inquiries that occurred when the decision was made to close the schools. There was much conversation about both the future use of the school site and the impact the transition of students would have on the relocated school site. They looked at safety, traffic, neighbors and there was a great deal of discussion on other issues also. There was a great deal of open dialogue and much of it was captured in the minutes of the meeting and also in the Helena media. **REPRESENTATIVE JACOBSON** asked if the public hearing process, due to the pending school closures, addressed the basic issues contained within the inventory components of this bill? **Dr. Messinger** said, in his setting, the answer to the question is yes.

**REPRESENTATIVE MANGAN** also had a question for **Dr. Messinger**.

What percent of the Helena school buildings were used for instruction in 1998? **Dr. Messinger** stated probably 85 to 90%.

**REPRESENTATIVE MANGAN** asked how many students were in the school system in 1998. **Dr. Messinger** said they probably had a little more than 8,000 students. **REPRESENTATIVE MANGAN** asked, in the year 2000, what percent of the Helena school buildings were used for instruction? **Dr. Messinger** said it would be the same percentage as they are using one of the buildings for an

alternative high school and they are leasing the second building. **REPRESENTATIVE MANGAN** asked how many students are in the system in the year 2000. **Dr. Messinger** said he believes there are about sixty fewer students this year. **REPRESENTATIVE MANGAN** said he was trying to justify the information requested in the **SPONSOR's** bill. Currently you have more students per square foot because you closed two schools. Is that correct? If you currently have the information, what would be the problem with submitting it? **Dr. Messinger** said he assumed it would not be a major issue for the submission, assuming that the data they have collected and maintained would be suitable. If they have to retrofit the information to the form, it might take time. It is not a huge burden. The greater burden would be on OPI for the purpose it would serve.

The **CHAIR** asked **Lance Melton, MSBA**, if he wished to comment on the bill. **Mr. Melton** said he doesn't see any necessity for having an exemption from the unfunded mandate clause in this bill. That is a red flag for MSBA. The mandate says the Montana Legislature does not impose an unfunded mandate on school districts without providing a funding mechanism for getting that new obligation done. You have heard that the information is probably already available. Title 2 would put a school district on legal obligation to produce this information if requested and it would be subject to attorney fees if it didn't produce it. Why have a provision in here that says we are going to give you an unfunded mandate and specifically declare that we are exempting ourselves from the unfunded mandate law because you are going to get it?

**Closing by Sponsor:**

**REPRESENTATIVE FACEY** said we are in a day and age when there is reduced public support for education. The public confidence in administration and trustees might not be as high as we would like it to be. He believes if he picked a school and wrote and asked for this information, it would take a long time for it to come. He doesn't believe the information is out there and all you have to do is ask for it. Some of the communities might be growing and the bill could be a vehicle for the districts in showing a need for building growth.

**EXECUTIVE ACTION ON HB 384**

**REPRESENTATIVE MANGAN** moved that **HB 384 DO PASS**.

**REPRESENTATIVE MANGAN** moved the following amendments: To make the following changes, on page 1, line 14, strike November and insert September and on line 17, strike December 1 and insert October 15. The second amendment would be to add the word "district" on line 16, following the word "school," on the first school building and the second school building, on line 22, insert the word "district" after the word "school," and on page 2, line 5, strike new section 3.

**Motion/Vote:** **REP. MANGAN** moved that **HB 384 BE AMENDED**. Motion carried 18-0.

**Discussion:**

**REPRESENTATIVE WOLERY** stated that the bill doesn't do much, the information is already available and it makes more work for OPI and maybe more work for the school district.

**REPRESENTATIVE OLSON** said Roundup School has this information and it could be supplied immediately. He can see someone in Washington mandating this legislature to come up with a building plan for every state building in the state. He cannot support the bill.

**REPRESENTATIVE MASOLO** said she could not support it with her respect for local control.

**REPRESENTATIVE FRITZ** stated that there is a great deal of unused space in Missoula and almost as much suspicion and conspiracy complexes in the city over the closed schools. She believes the **SPONSOR** was trying to respond to that situation. She does not see a need for the bill.

**REPRESENTATIVE LEHMAN** called for the question.

**Motion/Vote:** **REP. MANGAN** moved that **HB 384 DO PASS AS AMENDED**. Motion failed 2-16 with Branae and Mangan voting yes.

**REPRESENTATIVE MC KENNEY** moved **HB 384 AS AMENDED BE TABLED** by a reverse vote of 16-2.



**EXECUTIVE ACTION ON HB 321**

**REPRESENTATIVE OLSON** moved that **HB 321 DO PASS.**

**Discussion:**

**REPRESENTATIVE OLSON** said there are no amendments.

**REPRESENTATIVE MANGAN** asked that someone review the bill for him as he missed the hearing when he was ill.

**REPRESENTATIVE OLSON** said that when the outlying elementary districts have a greater population and taxable valuation than the district where the high school building is located, the district where the high school buildings are will have three trustees on the high school board and there will be four trustees from the outlying districts in trustee districts. This gives the population and taxable valuation in the outlying districts more of a say on the high school board. It must be approved by the local boards.

**REPRESENTATIVE GALVIN-HALCRO** asked if there is a greater tax value in the outlying districts, but not a greater population.

**REPRESENTATIVE OLSON** said that could be true in some areas, but in the Flathead area both the value and the population are greater than the district where the high school buildings are located.

**Connie Erickson** said she would like to clarify something in the bill for the committee. If one looks on page 2, line 14, subsection 3, the new language of this bill is that it offers a third alternative if more than half of the electors of the high school district reside outside the territory. In this particular section of law, there is another area that addresses the issue of taxable valuation. This particular new language primarily addresses the issue when you have more people residing outside the elementary district where the high school buildings are located that are part of the high school district. This particular part of the law is not talking about taxable valuation it is talking about the number of electors.

The **CHAIR** said that the people she had been hearing from live in eastern Montana and she doesn't believe they have the growing problems that the bill is addressing.

**{Tape : 1; Side : B}**

**REPRESENTATIVE LEHMAN** called for the question.

**Motion/Vote:** REP. OLSON moved that **HB 321 DO PASS. Motion carried 17-1 with Mangan voting no.**

**EXECUTIVE ACTION ON HB 322**

**REPRESENTATIVE GALVIN-HALCRO** moved that **HB 322 DO PASS.**

**Discussion:**

**REPRESENTATIVE LEHMAN** said that he has discussed the bill with the **SPONSOR**. He indicated that this was a problem brought to him by one of his constituents. **REPRESENTATIVE LEHMAN** believes this is a bad bill. It can't possibly be adhered to because loading zones at extracurricular events or activities are going to change throughout the course of the year based on weather conditions, the amount of snow, where it is pushed, etc. Having traveled the entire state of Montana for ten years and having gone to every school in the state at least twice a year, he can assure the committee that parking places vary from one time of the year to the next. For the most part, bus drivers are the most conscientious, careful drivers in the world and they will make every effort to load and unload students under the safest conditions available at the time. This bill would put an undue burden on the individual school districts throughout the state and perhaps law enforcement. He would urge the committee to give the bill a do not pass.

**REPRESENTATIVE WADDILL** said he would like to speak to the bill. He interprets the bill in a different way. It could be a matter of putting up some cones and he would rather error on the side of safety of the students. He is going to vote yes.

**REPRESENTATIVE JACOBSON** said he echos **REPRESENTATIVE WADDILL's** comments.

The **CHAIR** said that when the legislature passes a law that it thinks is simple, the law has unintended consequences. She had discussed it with other people and the **SPONSOR** and he is concerned about some unintended consequences that might be a problem for local school districts.

**REPRESENTATIVE MANGAN** said the thing that concerns him about this particular bill is the wording of lines 13,14 and 15. The trustees will apply to local government having jurisdiction for establishment of the passenger loading zone and, if you are talking about temporary loading zones, that may change as

**REPRESENTATIVE LEHMAN** has suggested. It may not be possible to get a permanent or temporary passenger zone. He would hate to have something in a statute that says a high school event cannot be held, when it may not be possible to meet the requirements of this bill should it become law. Making an error on the side of caution, he would have to vote no on the bill. Safety issues brought forward by this bill are important, but more investigation should take place before the bill could be passed.

**REPRESENTATIVE OLSON** said that he agrees with **REPRESENTATIVE MANGAN** and will vote no on the bill.

**Motion/Vote:** REP. WALTERS moved that HB 322 BE TABLED. Motion carried 14-4 with Bixby, Fritz, Jackson, and Waddill voting no.

**ADJOURNMENT**

Adjournment: 4:18 P.M.

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REP. GAY ANN MASOLO, Chairman

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NINA ROATCH, Secretary

GM/NR

**EXHIBIT** (edh27aad)